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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,061	08/24/2001	Lawrence Howell Sawyer	KCC-16,208	1730
35844	7590	08/19/2005	EXAMINER	
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			ANDERSON, CATHARINE L	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 08/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/939,061	SAWYER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	C. Lynne Anderson	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 10 June 2005.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-39, 57, 58, 60, 61 and 63 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-39, 57, 58, 60, 61 and 63 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Response to Arguments***

Applicant's arguments filed 10 June 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that Laux fails to disclose a densified layer, it is noted that the step of densification is a product-by-process limitation and does not recite a positive structural limitation. Laux discloses the structural limitations of the instant claim, and therefore the final product of Laux fulfills the claimed limitations. The step of densification does not clearly impart distinctive structural characteristics. The instant specification, in the paragraph bridging pages 27 and 28, merely suggests that the step of densification may possibly impart a certain flexibility, but does not provide any evidence that the process results in a distinctly different product. Further, the possible improvements resulting from the densification step may occur only when the pad is densified by a process involving heat and humidity, but the instant claim allows for any method of densification. Therefore, the argument that the densification step may impart flexibility is moot.

In response to applicant's argument that Laux in view of Coles fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the method by which the gel strength is measured) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification,

limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11, 15-30, 34-36, 58, 60, 61, and 63 are rejected under 35 U.S.C. 102(b) as being anticipated by Laux et al. (5,827,259).

Laux discloses an absorbent pad 48 comprising a single layer, as shown in figure 2. The absorbent pad 48 comprises between 30% and 85% superabsorbent material homogeneously mixed with between 15% and 70% pulp fluff, as disclosed in column 19, lines 50-65. The absorbent pad 48 has a density greater than about 0.28 g/cc, as disclosed in column 20, lines 1 and 15-17, and a thickness of less than 5 mm, as disclosed in column 20, lines 9-13. The absorbent pad 48 has an absorbent capacity of between about 14 and 40 g/g, as disclosed in column 19, lines 27-31. Since the absorbent pad 48 disclosed by Laux is comprised of the same materials as the claimed invention, and has the same density, thickness, and absorbent capacity, it is inherent that the edge compression of the absorbent pad 48 will be the same as the claimed invention. Laux therefore discloses an absorbent pad that fulfills all limitations of the claim. With respect to the limitation disclosing the absorbent pad has been compacted to a density of greater than about 0.28 g/cc, it is noted that the claim is drawn to an article of manufacture not a method of forming the article. The limitation of compacting the article is a product by process limitation. The absorbent pad disclosed by Laux

provides the identical structure disclosed in the claim, and therefore fulfills the limitations of the claim.

With respect to claims 2 and 3, the absorbent pad 48 has a density greater than about 0.32 g/cc, as disclosed in column 20, lines 1 and 15-17.

With respect to claims 4 and 5, the absorbent pad comprises between 40% and 80%, and between 50% and 75% superabsorbent material, as disclosed in column 19, lines 50-65.

With respect to claim 6, the absorbent pad 48 further comprises a plurality of man-made fibers, as disclosed in column 18, lines 26-28.

With respect to claim 7, the absorbent pad 48 further comprises carrier particles, as disclosed in column 18, lines 26-28.

With respect to claims 8 and 9, the absorbent pad 48 is less than 5 mm thick, which includes the ranges of between 0.6 and 2.5 mm, and 0.7 and 2.0 mm.

With respect to claims 10 and 11, the absorbent pad 48 has an absorbent capacity of at least 16 g/g, as disclosed in column 19, lines 27-31.

With respect to claims 15-20, the absorbent pad 48 is present in an absorbent article, diaper, training pant, feminine hygiene product, incontinence product, and is capable of being used as a swim garment, as disclosed in column 2, lines 48-60.

With respect to claim 21, the absorbent material forms a gradient within the absorbent pad 48, as disclosed in column 18, lines 5-7.

With respect to claims 22 and 23, the absorbent pad comprises between 40% and 80%, and between 50% and 75% superabsorbent material, as disclosed in column 19, lines 50-65.

With respect to claim 24, the absorbent pad 48 further comprises a plurality of man-made fibers, as disclosed in column 18, lines 26-28.

With respect to claim 25, the absorbent pad 48 further comprises carrier particles, as disclosed in column 18, lines 26-28.

With respect to claims 26 and 27, the absorbent pad 48 is less than 5 mm thick, which includes the ranges of between 0.6 and 2.5 mm, and 0.7 and 2.0 mm.

With respect to claims 28-30 the absorbent pad 48 has an absorbent capacity of between 14 and 40 g/g, and at least 16 g/g, as disclosed in column 19, lines 27-31.

With respect to claim 34, the absorbent pad 48 includes more superabsorbent material at a first end than at a second end, as disclosed in column 20, lines 42-44.

With respect to claim 35, the absorbent pad 48 includes more superabsorbent material along a top surface, as disclosed in U.S. Patent 4,699,823 and incorporated by reference in column 18, lines 13-16.

With respect to claim 36, the absorbent pad 48 includes more superabsorbent material along a bottom surface, as disclosed in column 18, lines 8-13.

With respect to claim 58, the absorbent pad 48 is encompassed by a wrap sheet 70.

With respect to claim 60, the absorbent pad 48 is formed in a specific shape, as shown in figure 1.

With respect to claim 61, the absorbent pad 48 is encompassed by a wrap sheet 70.

With respect to claim 63, the absorbent pad 48 is formed in a specific shape, as shown in figure 1.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 12-14 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laux et al. (5,827,259) as applied to claims 1 and 21 above, and further in view of Coles (5,722,967).

Laux discloses all aspects of the claimed invention but remains silent as to the gel strength of the superabsorbent material.

Coles discloses a superabsorbent material for use in an absorbent pad having a gel strength of at least 0.85, as described in column 7, lines 6-9. Superabsorbent materials having a high gel strength are well-known to be highly stable. It would therefore be obvious to one of ordinary skill in the art at the time of invention for the superabsorbent material of Laux to have a gel strength of at least 0.85, as taught by Coles.

Claims 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laux et al. (5,827,259) as applied to claim 21 above.

Laux discloses all aspects of the claimed invention but remains silent as to the variation of concentration of the superabsorbent material. It would have been obvious to one of ordinary skill in the art at the time of invention to vary the concentration of superabsorbent by about 0.15 to about 0.25 g/cc, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laux et al. (5,827,259) as applied to claim 1 above, and further in view of Pieniak et al. (5,451,442).

Laux discloses all aspects of the claimed invention with the exception of the absorbent pad having a higher basis weight in a first zone than in a second zone.

Pieniak discloses an absorbent pad 14, as shown in figure 4, comprising compressions 40. The absorbent pad 14 has a reduced thickness and basis weight at compressions 40, as disclosed in column 7, lines 38-39. The compressions 40 act as folding lines to provide the article with an improved and more comfortable fit, as disclosed in column 10, lines 57-65.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the absorbent pad of Laux with the compressions of Pieniak to provide the article with an improved and more comfortable fit.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cwa  
cla  
August 9, 2005

TATYANA ZALUKAEVA  
PRIMARY EXAMINER

